THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT APPEAL Nos. 1007 & 1008 OF 2004

Date : 28-01-2006

Between:

Government of A.P., rep. by its Principal Secretary,

Revenue Department & Others.

…..Appellants

and

Smt.V.Lingamma & Others.

.....Respondents

For Appellants : G.P. FOR REVENUE

For the Respondents : MR.S.NIRANJAN REDDY

< Gist:

> Head Note:

? CITATIONS:

1. 2000 AIR SCW 758
2. 1987 (2) ALT 46 (NRC)

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COMMON JUDGMENT : (Per Hon'ble Sri Bilal Nazki, J)

These two appeals have been filed against a common order passed in writ petition Nos.26301 and 25967 of 2003. Petitioners claimed that one Shaheen Aziz Ahmed was allotted a plot measuring Ac.2-30 guntas in Plot No.10 of erstwhile Jubilee Hills Municipality.

Writ petition No.25967 of 2003 was filed seeking a direction that respondents should not interfere with the petitioners' right over their property measuring Ac.2-30 guntas in Plot No.10 co-related to T.S.No.4/2, Block-G, Ward No.10, Road No.10, Banjara Hills, Hyderabad. When the writ petition came up for hearing, the Court

was informed by the learned Government Pleader on 16.12.2003 that the District Collector, Hyderabad had passed an order on 5.12.2003 under A.P.Escheats and Bona Vacantia Act, 1974 (hereinafter referred to as 'the Act'), and the same had been sent for publication. Thereafter, it appears, another writ petition was filed being writ petition No.26301 of 2003. In this writ petition, relief claiming quashing of order was not sought, although in the writ petition it had been stated that the petitioners were challenging the order dated 5.12.2003, passed by the District Collector, Hyderabad under Section 5 of the Act. On the other hand, the prayer made in this writ petition was –

> *"It is therefore prayed that this Hon'ble Court may be pleased to issue Writ, Order or Orders, Direction or Directions more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd respondent in invoking the provisions of A.P.Escheats & Bona vacantia Act 1974 to the Petitioners' property admeasuring Acs.2.30 guntas in Plot No.10 co-related to T.S.No.4/2, Block-G, Ward No.10, Road No.10, Banjara Hills, Hyderabad and issuing Progs.No.11/3920/1998 dated 5-12-2003 as being illegal, arbitrary, unconstitutional and consequently restrain and forbear the respondents from interfering with the petitioners' rights over the said property in any manner and pass such further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."*

The learned Single Judge has allowed both the writ petitions.

Writ Petition No.26301 of 2003 is more comprehensive, although it also does not challenge the order, which has been passed by the Government under the Act with respect to the property in dispute. The facts mentioned in this writ petition shall be taken into consideration for the purpose of disposal of these appeals.

Petitioner Nos.1 to 8 are children of one late V.Malla Reddy. Petitioner No.8 claims to be the G.P.A. holder of other petitioners. Petitioner No.9 is a Company and is represented by its Secretary Mr.M.V.Srinivasa Murthy.

According to the petitioners, Shaikpet village was earlier called as 'Kanchtatti khana', which was a Sarfekas village. Said property was personal property of the then Nizam. In the year 1940-41, the then Nizam VII constituted Jubilee Hills Municipality for development of lands in Sarfekas village. The land in Survey No.129 was measuring more than three thousand acres. It was divided into various plots and plot numbers were assigned to the plots. Thereafter, these plots were allotted to individuals. One Shaheen Aziz Ahmed was allotted a plot measuring Ac.2-30 guntas in plot No.10. Shaheen Aziz Ahmed, thereafter, sold the said plot in favour of one Mr.V.Malla Reddy, the father of petitioner Nos.1 to 8, on 12.3.1358 fasli. Ever from the said date, the father of petitioner Nos.1 to 8 was continuing in continuous, demonstrable ownership and possession of the property. They had appointed also a watchman, who used to reside in watchman's quarter constructed in the suit plot. It is contended that the father of petitioner Nos.1 to 8 also constructed a compound wall for protecting the property. It is further contended that several bogus claims were made with regard to allotment by the erstwhile Nizam Government in Jubilee Hills area. After an inquiry, the respondent No.1 issued a Memo on 6th December, 1967 and had given the names of 41 individuals, whose claims to allotment were held to be valid. Name of Shaheen Aziz Ahmed was also mentioned in the list of said 41 members. Thus, according to the petitioners, the allotment in favour of Shaheen Aziz Ahmed was accepted.

There were some disputes between the petitioners and some others and the Commissioner of Survey Settlements and Land Records passed an order on 15.11.1985, directing the parties to approach the Civil Court. Before the issue could be settled, another party by name 'Viswa Saptagiri Co-operative Housing Corporation' filed a suit for injunction in O.S.No.2467 of 1984 before the V-Assistant Judge, City Civil Court, Hyderabad, against the petitioners' father, contending that they had purchased the property under an agreement of sale from Danubai, who was the General Power of Attorney holder of Ali Asgar Ceazar. The said Ali Asgar Ceazar had claimed that he had

purchased the property from the daughter of Shaheen Aziz Ahmed. Suit was dismissed. Two other suits were filed being O.S.Nos.33 of 1988 and 1536 of 1996. The Court recorded the possession of the petitioners over the subject land. Appeals filed are pending before the High Court. It is claimed that the suit schedule property was divided and a final decree for partition was made by V Additional Civil Judge, City Civil Court, Hyderabad on 11.10.1991.

It is also said that the father of petitioner Nos.1 to 8 and his father had made a declaration under Section 6 (1) of the Urban Land (Ceiling) Regulation Act, 1976 and orders were passed by the authorities under that Act also. Now, the land has remained disputed between various parties at different times before different authorities. The case of the petitioners is that they are the original owners of the land and have purchased the land from the original allottee and therefore, no action could be initiated against them under the Act.

The order passed on 5.12.2003 is challenged mainly on the ground that the procedure contemplated under the Act has not been complied with. We are conscious of the fact that this Court, in these writ appeals, would not be able to decide about the ownership of the land, and this Court would only examine whether the procedure as contemplated by the Act, was followed.

“Bona Vacantia” has been defined under Section 2 (1) of the Act and includes any property situated in the State of which there is no rightful owner, but does not include an escheat on any movable property found in a public place.

Section 7 of the Act contemplates an inquiry relating to escheat or bona vacantia by local officer. It lays down –

> *“Whenever the local officer receives information from any source that any property of the nature of an escheat or a bona vacantia is situated or lying within his jurisdiction, he shall cause an inquiry to be made in respect thereof.”*

Under Section 8, it is provided –

> *"(1) Where, as a result of the inquiry under Section 7, the local officer is satisfied that the property of the nature of an escheat or bona vacantia is in the possession of a person who has no authority to claim it and if such person resists to surrender such possession on demand, the local officer may after obtaining the sanction of the competent authority, institute a suit in a Court for declaration of the Government's right to the property and for recovery of possession of such property.*
>
> *(2) Where the Court has declared that the property is an escheat or a bona vacantia, the local officer shall obtain the possession thereof through the Court and manage it or dispose it of in such manner as may be prescribed."*

Section 9 applies where the property is not in possession of any person or its possession is surrendered. It lays down –

> *"Where the property of the nature of an escheat or a bona vacantia is not in the possession of any person or where the person in possession surrenders such possession when demanded, the local officer shall take the property into his custody and arrange for its care and maintenance until the claim is settled under Section 11."*

Section 11 prescribes the procedure by which a property can be declared to be an escheat or bona vacantia. Section 11 is reproduced hereunder –

> *"(1) As soon as may be after the property is taken into his custody under Section 9, the local officer shall publish a notice in such manner as may be prescribed, calling upon the persons who may have any claim to such property to prefer their claims to such property in the prescribed form within three months from the date of publication of the notice.*
>
> 2. *If no claim is preferred within the said period of three months, the local officer shall declare the property in respect of which the notice is published under sub-section (1) to be an escheat or a bona vacantia, as*

the case may be, and dispose it of in such manner as may be prescribed.

(3)(a) If any person prefers a claim within the said period of three months, the local officer shall refer the claim to the court for its decision as to whether or not the person making the claim is entitled to the property: and the court shall, after giving a notice to the local officer and to the claimant, decide the reference, as if it were a suit;

(b) Where the court decides that the property taken into custody under Section 9 or any part thereof rightfully belongs to the claimant, the local officer shall deliver the same to him and where the court decides that it does not belong to the claimant, the court shall declare the property to be an escheat or a bona vacantia, as the case may be."

The respondents have contended that the impugned order was only an order passed under Section 9 of the Act and proceedings under Section 11(1) of the Act have been initiated in Form-II and proceedings under Section 11 have not yet been completed.

The learned counsel for petitioners, on the other hand, submits that before passing an order under Section 9 of the Act, an inquiry is contemplated under Section 7 of the Act. Since no inquiry has been conducted and the order has been passed by the respondents on the basis of some material, which, according to them, was available with them, and at no point of time, the petitioner had been given any chance to show that the property could not be declared 'bona vacantia'. So, the question before this Court would be – any inquiry is contemplated under Section 7 of the Act.

There can be two types of properties which can be declared 'bona vacantia' in terms of the Act – one, which is in somebody's possession, who is not its rightful owner, and the other case can be, where the property is not in possession of anybody, and has no

rightful owner or where it was in somebody's possession, but the possession was surrendered. Section 7 of the Act merely states that an inquiry shall be conducted by a local officer, if he has information from any source that any property of the nature of an escheat or bona vacantia, was situated within his jurisdiction. Once he finds out that such property is situated in his jurisdiction, his functions under Section 7 of the Act are over and Section 7 does not contemplate any notice to anybody. It has a limited purpose of coming to a conclusion whether there was any property of the nature of an escheat or bona vacantia situated in local officer's jurisdiction. The next stage would be Section 8 or Section 9 of the Act. If he finds that the property was an escheat or bona vacantia and was in possession of an unauthorized person and that person resists to surrender such possession, the local officer is supposed to file a suit and obtain a declaration from the Court. But, if he finds that the property is not in possession of anybody or the possession is surrendered, he will immediately proceed under Section 9 of the Act.

It is the case of the respondents that the land was not in possession of the petitioners at all. In the counter affidavit, the Collector has stated, *"I have inspected the land on 4.12.2003 and it is found that the land is vacant on ground and it is in the possession of the Mandal Revenue Officer, Shaikpet Mandal."* Therefore, in our view, no notices were required to be issued to any person or any interested person under Section 7 of the Act. As has been stated hereinabove, Section 7 has a limited purpose of identifying the property as a bona vacantia and nothing beyond that.

After Section 9, a notice has to be published in terms of Section 11 of the Act, calling upon the persons, who may have any claim to such property, to prefer their claim to such property in prescribed form, within a prescribed time and the respondents have contended that they have already initiated the proceedings under Section 11 of the

Act, in which the petitioners can participate. Therefore, the order is not at all to their prejudice.

The learned Single Judge has, however, relied on a judgment of Supreme Court in the case of **Shoe Nand v. Dy.Director of Consolidation, Allahabad.** We do not find that this judgment has any relevance for the purpose of present controversy.

Reliance is also placed on a judgment in the case of **G.Narsimha Reddy v. State of A.P.** The full judgment was not made available. However, a "note on the recent cases" is placed before us. The note is reproduced hereunder –

> *"**Held** :-- The impugned notice is bad. Section 7 of the Act contemplates an enquiry to come to the conclusion that a particular property is escheat or bona vacantia. Once it is concluded that the said property is escheat or bona vacantia, the local officer has to obtain the permission of the competent authority and file a civil suit for recovery of possession against the persons in possession and, after the suit is decreed, he can recover possession from the said persons. But there is no provision in the Act empowering the local officer to recover the possession by giving a notice, when, particularly, the possession is registered."*

There is no quarrel with the principle laid down by this judgment. In a case where the possession is with some person, then, a suit has to be filed under Section 7 of the Act, but where the possession is not with any person, the local officer can take the possession. In this case, the possession was with some persons, who were holding for more than fifty years.

We have already held that the result of inquiry contemplated under Section 7 of the Act does not decide any of the rights of any

person interested in the property. This section merely gives a power to the local officer to see whether any property of the nature of an escheat or a bona vacantia is situated or lying within his jurisdiction. If the purpose of the Legislature was that a finding under Section 7 of the Act shall be given by an inquiry officer after a full-fledged inquiry, then there would have been no provision in the nature of Section 7 contemplating filing of a suit before Civil Court against a person not surrendering the possession as a result of inquiry under Section 7 of the Act. The purpose of Section 7 is only that the local officer comes to the conclusion that the property of the nature of an escheat or bona vacantia was situated in his jurisdiction.

For these reasons, we allow the writ appeals and set aside the order of the learned Single Judge. However, in the interest of justice, time is extended by two weeks from today to file objections in response to the notice issued under Section 11 of the Act. No order as to costs.

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(BILAL NAZKI, J)

28-01-2006

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(R.SUBHASH REDDY, J)

N.B:-

L.R. copies to be marked.

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